

REMARKS

Applicants thank Examiner Hui for the courteous and helpful discussion held with their representative on March 24, 2005. The results of that discussion are reproduced and expanded upon below.

Applicants appreciate the Examiner's indication in the Advisory Action that the amendment filed October 22, 2004, obviates the rejection under 35 U.S.C. § 103.

As discussed during the interview, Claim 1 has been amended to limit both the propellant and the carrier. Support is found at, e.g., the last paragraphs on pages 6 and 7 in the specification. Claim 17, drawn to a method of using the composition, has been rewritten as an independent claim consistent with the amendments to Claim 1.

Claims 2, 4-7, 18-19, 21-22, and 25 have been canceled.

Dependent Claims 3, 8, 11-14, 20, and 23-24 have been amended for clarity and to accommodate the amendments to the independent claims. Support is found in the claims as originally filed.

New Claims 26-34 have been added and find support in the claims as originally filed.

No new matter is believed to be added by entry of the amendments. Upon entry of the amendments, Claims 1, 3, 8-17, 20, 23 and 26-34 will be active. Entry and favorable consideration are kindly requested.

The rejection under 35 U.S.C. § 112, second paragraph is kindly traversed in-part and obviated in-part by amendment.

In addition to a specific amount of carbon dioxide, the claimed composition contains both a carrier and a propellant. Propellants and carriers as well as their properties are generally known in the art. Applicants did not invent either carriers or propellants, and indeed the present invention is not claiming merely a carrier or a propellant. The invention is much narrower, being

directed to a cosmetic composition and method for its use for improving the appearance of skin, which comprises:

from about 0.1 to about 8 wt% carbon dioxide;

from about 92 to about 99 wt% of a non-gaseous, dermatologically acceptable carrier, wherein said carrier is not a fluorocarbon and comprises at least 10% by weight of water; and

a propellant selected from the group consisting of 1,1-difluoroethane, 1,1,1,2-tetrafluoroethane, and a combination thereof.

As discussed at the interview, there should be no confusion between the claimed carrier and propellant. The Office, in its Action dated May 6, 2004, appears to have misread the claims. In that Action, the Office incorrectly asserts that the claimed *composition* is fluorocarbon free. As is clear from the claims, the present composition contains fluorocarbons - as propellants, not as carriers. The claimed *propellants* are specific low-boiling fluorocarbons: 1,1-difluoroethane and 1,1,1,2-tetrafluoroethane. The claimed *carrier*, on the other hand, is not a fluorocarbon, is non-gaseous, is dermatologically acceptable, and contains at least 10% by weight of water.

One skilled in the art can readily understand that a single composition may contain both a carrier and a propellant and not be confused. These claim terms are well understood, and there is nothing to preclude their presence in a single composition. The claimed propellant is clearly defined in the specific fluorocarbons (1,1-difluoroethane and 1,1,1,2-tetrafluoroethane). The claimed carrier is clearly defined in part by what it is (non-gaseous, dermatologically acceptable and containing at least 10% by weight of water) and what it is not (i.e., it is not a fluorocarbon). One reading the claims would readily know when one is inside and outside the boundaries of the claims, and, as such, the claims are not indefinite. This ground of the rejection should be withdrawn accordingly.

With respect to Claim 3, Applicants kindly submit that the term, “esters” is well understood by one of ordinary skill in the chemical arts, just as one would understand “alcohols”, “acids”, and “bases”. The claim is not made indefinite by the inclusion of the term, “esters”. The boundaries of this claim are clear, since one would readily know when a composition does or does not contain an ester.

With respect to Claim 12, Applicants kindly point out MPEP § 2173.05(h), which allows one to include both genus and species to that genus in a Markush group. Even if the terms, “oils”, “fatty acids”, and “lipids” were to overlap with one another such that the same molecule could be classified under two different terms, it would not preclude their use in the same Markush group.

For the reasons given above, Applicants kindly request that the rejection under 35 U.S.C. § 112, second paragraph, be withdrawn.

As was discussed during the interview, Applicants appreciate the Examiner’s withdrawal of the previous obviousness rejection based on the amendment dated October 22, 2004. Applicants also acknowledge the Examiner’s indication in the Advisory Action that such amendment broadened the claims. Applicants kindly submit, however, that the claims as presently amended could not be rejected over either Mackles, et al. or Penska, et al., alone or in combination. There is no motivation to combine these references, no expectation of success in the combination, and the present invention would not result from the combination. Mackles, et al. is an *anhydrous* composition having nothing to do with carbon dioxide, and Penska, et al. is solely directed to carbon dioxide-containing compositions that rely on a specific *liquid* fluorocarbon carrier in which each exemplary composition contains water.

Applicants respectfully submit that this application is in condition for allowance. The present claims present patentable subject matter, and the Examiner is kindly requested to pass this case to issue. As was emphasized during the interview, if the Examiner believes that anything further is required to expedite the prosecution of this application or further clarify the issues, the Examiner is requested to contact Applicants' representative by telephone at the number listed below.

Respectfully submitted,

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